



FINAL Report:
Puget Sound Clean Air Agency
Title V Program Review

EPA Region 10
September 7, 2006

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Attachment

- I. Completed Questionnaire

Introduction

This report documents the Title V program review for Puget Sound Clean Air Agency (PSCAA) located in western Washington.

Overview and Program Review Objective

In response to recommendations in a 2002 Office of Inspector General audit, EPA has set an aggressive national goal of reviewing all state and local Title V programs by the end of fiscal year 2006. Specifically, EPA has developed an action plan for performing reviews of state and local Title V programs and has committed to continuing the Title V fee reviews begun in 1998. The objective of the broader program reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting.

EPA Region 10 has completed reviews of the Idaho, Oregon, Lane County (Oregon) and Spokane County (Washington) Title V programs. In addition, Region 10 is in the process of completing program reviews for Washington Department of Ecology, Northwest Clean Air Agency (located in northwestern Washington) and Alaska Department of Environmental Conservation.

We would like to acknowledge and express EPA's appreciation for the cooperation and patience of PSCAA management and staff throughout all stages of our review of their Title V program. Receiving the timely and complete questionnaire response in advance of the on-site interviews was very helpful, allowing EPA to narrow the focus of our on-site interviews. PSCAA's efforts to make management, staff, and space available to EPA for the interviews also helped make the on-site time very productive.

General PSCAA Title V Program Background

PSCAA is a local air pollution control agency with jurisdiction in four counties located in western Washington: King, Kitsap, Pierce and Snohomish. EPA is the Title V permitting authority in Indian country within those four counties with one exception: PSCAA is the Title V permitting authority on non-trust land within the 1873 Survey Area of the Puyallup Reservation. Within PSCAA's four-county area, Washington Department of Ecology is the permitting authority for all chemical pulp mills and aluminum smelters and Washington Energy Facility Site Evaluation Council (EFSEC) is the permitting authority for all thermal electric energy projects that are at least 350 megawatts in size.

PSCAA has its own Title V fee regulation but requires sources to comply with the Washington Department of Ecology Title V regulation found in Washington Administrative Code (WAC) 173-401. EPA granted PSCAA, along with Washington state, six other local agencies and EFSEC, interim approval of its Title V program effective December 9, 1994, and full approval effective September 12, 2001, 66 FR 42439 (August 13, 2001).

PSCAA issues Title V permits to approximately 40 sources. There are 6 full-time permit engineers at PSCAA that divide their time between Title V permits (approximately 40% of their time) and construction approvals.

Program Review Basis

EPA's review of PSCAA's Title V program, which began in November 2005, is based on answers PSCAA provided to an EPA questionnaire, review of a selection of issued permits and statements of basis, review of reporting forms, and interviews with PSCAA representatives during a site visit on

January 18 and 19, 2006. This information was analyzed with regard to Part 70 regulations and policies and PSCAA and Ecology state regulations.

A questionnaire, developed by EPA Headquarters with input from the Regions and revised by Region 10 to include a table titled State/Local Title V Program Fiscal Tracking Evaluation Document (the protocol developed by EPA in 1997 and used in previous Title V fee program reviews), was sent to and completed by PSCAA in advance of Region 10's on-site visit to the agency. We reviewed the completed questionnaire (Attachment I) and other available information prior to the on-site visit, including the following six issued permits:

Jeld-Wen, Inc
Boeing Commercial Airplane Group Auburn
U.S. Oil & Refining Company
Ash Grove Cement Company
Glacier Bay Catamaran
Premier Industries, Inc

While on site at the PSCAA office, we interviewed the management and air permitting staff. We discussed PSCAA's Title V fee program with management and finance staff. The purpose of the interviews was to confirm and clarify what we learned from our review of the permits and questionnaire and to ask questions that developed during our pre-visit review.

EPA's review team included five Region 10 staff members, including legal and technical support. Key elements of each individual's observations, as well as observations from the on-site interviews, are highlighted and discussed in the report.

Program Review Report

This program review report is formatted consistent with the program review questionnaire. Within each of the topic areas, the report describes good practices, concerns, and other notable observations. The fee protocol information is addressed in the Resources and Internal Management Support section of the report. The report addresses the following topic areas:

- A. Permit/Review Report Preparation and Content
- B. General Permits
- C. Monitoring
- D. Public Participation and Affected State Review
- E. Permit Issuance/Revision/Renewal
- F. Compliance
- G. Resources and Internal Management Support
- H. Title V Benefits
- I. Document Review (Rules/Forms/Guidance)

With the exception of Section H, each section of the report highlights and discusses good practices, concerns, and other general observations. In response to the program review questionnaire and during the on-site interviews, PSCAA identified a number of benefits that have resulted from the implementation of the Title V program. The notable benefits realized by PSCAA, which reflect the value that can come from responsible implementation of such a comprehensive air quality program, are listed in Section H.

In general, we included in the report only those good practices that are unique to PSCAA or seem particularly worth noting and passing along to other permitting authorities. PSCAA's implementation of the program includes many other good practices that are not specifically discussed in the report because they are widely used among other Title V permitting authorities.

A summary of concerns is also provided that identifies those issues that will need to be addressed. Some concerns identified in this review will need to be resolved as PSCAA revises their operating permits and their program is updated. EPA Region 10 expects PSCAA to respond to each of the concerns identified in this report. EPA will work with PSCAA to address the identified concerns and will schedule follow-up as needed.

A. Title V Permit Preparation and Content

Good Practices

1. PSCAA permit engineers share questions and discoveries with each other daily, meet periodically to discuss issues and routinely participate in the Washington permit engineers' quarterly meetings to share information with other agencies. Permit engineers work closely with the inspection staff when researching a source's compliance history and operations, drafting the permit, and before and during inspections. This collaboration likely results in better, more comprehensive and more enforceable permits. Further permit quality and consistency is assured through peer review by the supervisory engineer, the director of compliance and the agency attorney.
2. PSCAA performs a thorough review of available data to confirm the compliance status of each permitted source before permit issuance. They then work with their sources to resolve compliance issues during the Title V permit development process without allowing that work to unduly delay issuance of permits.
3. PSCAA's statements of basis generally are very useful in that they follow the permit format and provide specific explanations for many portions of the permit. In particular, the discussions about monitoring and inapplicable requirements appeared to be well written and very helpful for understanding the decisions made. A table of contents would be a nice addition to the statement of basis format.
4. When incorporating complex MACT standards (for example) into permits, rather than write the entire standard into the permit, in most cases PSCAA is careful to clarify the specific monitoring, recordkeeping and reporting and compliance demonstration techniques the source plans to use, particularly when options exist in the standard. In this way, the permit can be used to simplify broadly-written regulations. PSCAA balances this approach by adding the details that are necessary for ensuring the source and agency understand what is meant by the permit.
5. Despite the more-challenging table format that PSCAA uses for their permits, the permits appear to be well written and comprehensive. It is obvious from review of the permits and interviews with permit engineers that PSCAA's technical staff has a good understanding of air pollution standards and air pollution engineering.

Concerns

1. Applicable requirements that are "state-only" requirements are generally clearly marked in the permit; however, it is not accurate to say that only requirements approved by EPA through sections 110, 111 and 112 of the Clean Air Act (CAA) are federally enforceable. Section 70.6(b) of the CAA and WAC 173-401-625 state that all terms and conditions of a Title V permit are federally enforceable except those designated as "state-only" and that "state-only" requirements are those requirements that are not required under the CAA or any of its applicable requirements. For example, standard permit terms from WAC 173-401 that are included in a Title V permit are federally enforceable. This statement about federal enforceability should be clarified.
2. Several permits included a narrative in the permit which seemed to explain the applicable requirements table and certain applicable requirements. There is also a nice explanation of some of the SIP approval issues that impact the applicable requirements in permits. While helpful, these types of explanations are best placed in the statement of basis.

3. Most permits also included a statement that unit-specific monitoring supersedes facility-wide monitoring. It is not clear whether unit-specific monitoring supersedes all of the facility-wide monitoring, or just in those cases where there is a conflict. This should be clarified.
4. The table format used by PSCAA, and other permitting authorities in Washington, can lead to difficulties for permit engineers. Some permit engineers tend to abbreviate necessary wording of rules and requirements in order to fit lengthy text into the narrow columns, which can lead to unclear or incomplete requirements. Formats that do not limit the space for writing a requirement help to ensure the requirement is written with the necessary details and formatting to make the requirement clear. Often, substantial portions of pages are blank because all of the text is in a single column, which unnecessarily lengthens the permit without adding value. In Table 1 of the permit, due to the need to cite multiple regulations in column two, the other columns are under-utilized. While it would likely take a considerable effort to change all of the permits to a text format (see permits issued by Oregon or Idaho), PSCAA should consider the benefits of making the changes during permit renewals.
5. PSCAA's permit format includes in the emission unit-specific applicable requirements table a mix of requirements including emission and operational limits; testing; monitoring and recordkeeping; and reporting. PSCAA should consider an alternative format that would be more "user-friendly" such as organizing the permit by emission unit first and then by requirement type. For example, PSCAA's format does not allow an inspector to easily extract a list of monitoring and recordkeeping requirements for each emission unit to review during an inspection if those types of requirements are not separated in the permit. Similarly, it was common to find operation and maintenance requirements mixed in with monitoring requirements in PSCAA's permits. Monitoring is generally used to identify problems (or assure there are no problems) while maintenance is used to avoid problems or to address identified problems. Finally, operation and maintenance requirements do not necessarily satisfy the need to have monitoring; in fact, monitoring should be specified to assure compliance with any operation and maintenance requirements. PSCAA should consider the benefits a new permit format would bring.
6. PSCAA noted that none of the initial permit applications contained enough information to draft a permit. PSCAA (and the state Department of Ecology who authored the rule) did not require the use of a specific application form. Developing and requiring the use of a specific permit application may have helped PSCAA and other agencies in Washington obtain the information needed to draft a permit. PSCAA similarly does not require the use a specific application for permit renewals.

Other Observations

None

B. General Permits

PSCAA has not developed or issued any general permits.

C. Monitoring

Good Practices

1. Each statement of basis contains a discussion of five factors used to support monitoring decisions made for gap-filling purposes: initial compliance; margin of compliance; variability of process and emissions; environmental impact of problems; and, technical considerations. This is an excellent approach for assuring sound, consistent monitoring decisions.

Concerns

1. While PSCAA has been good about filling gaps in monitoring, they rarely enhance insufficient monitoring found in some underlying requirements. If PSCAA does not believe they have the authority to enhance insufficient monitoring in the Title V permit issuance process, they should revise the underlying applicable requirement to ensure the Title V permit has sufficient monitoring to assure compliance.
2. PSCAA often relies on manufacturer specifications for setting acceptable parameter monitoring ranges. Furthermore, parameter ranges for monitoring are rarely included in the permit; rather, the source is required to write the acceptable range down at the facility. Parameter monitoring to assure compliance with applicable requirements is a critical part of the Title V permitting program. In fact, it is EPA's policy that monitoring parameter ranges required by NESHAP and NSPS, either the monitoring parameter range or the procedure for setting the range should be in the permit. Additionally, the statement of basis should explain how operation within the parameter range assures compliance. It is important to ensure that the parameters and their acceptable ranges can be relied upon to represent compliance (or noncompliance). Representative monitoring parameters and ranges provide certainty for the agency, the source and the public and can be established through reference method testing (to establish the relationship between the parameter and the applicable requirement), through review by the permit writers and through documentation of the acceptable ranges complete with procedures for setting and changing the ranges. When renewing permits, PSCAA should ensure monitoring parameters and ranges relied upon in permits accurately represent performance and compliance of the emission sources.
3. Nearly all of PSCAA's permits reviewed by EPA contained at least one tiered approach to monitoring, commonly for opacity and particulate emission limits. The approach normally begins with some sort of an observation which can lead to corrective actions, additional observations and eventually deviation reporting. Rarely did the monitoring scheme lead to a reference method test (e.g. RM 9 or RM 5). Where initial observations indicate possible concerns about compliance, the permit can be designed to automatically require a reference method test to confirm compliance. This is particularly appropriate where the initially-observed concerns recur often or are not promptly corrected. When renewing permits, PSCAA should add specific reference method testing where appropriate and consider the use of "automated" test requirements.

Other Observations

None

D. Public Participation and Affected State Review

Good Practices

1. In addition to publishing public notices in two newspapers (one local and one regional - Daily Journal of Commerce) and sending them to their maintained e-mailing list (through an on-line self-subscription service), PSCAA uses the Washington Department of Ecology Air Operating Permit Register and posts them on the PSCAA website. Notices are also sent to a list of affected states and tribes. An obvious enhancement to PSCAA's e-mail subscription service would be to allow individuals to select (and receive) only the sources/permits that they are interested in receiving notices about.

Concerns

1. Like many of the permitting authorities across the country, PSCAA provides the permittee with a pre-draft permit for review and comment before the draft permit goes out for public comment. Soliciting the permittee's input on the factual aspects of the permit can help to reduce errors in the permit and help educate the permittee on its obligations under the permit. Working with the permittee on developing the substantive requirements of the permit, however, can create the impression that the permit issuance process is not an open process. PSCAA should carefully balance these interests as it works with permittees during the development and issuance of Title V permits.

Other Observations

1. Public involvement is an important part of the Title V process. The Clean Air Act requires states to solicit public comment on draft permits and to provide the public the right to challenge permits in state court. Although PSCAA meets these requirements, only about 12% of their Title V permits receive comments from someone other than the permittee or EPA. PSCAA does not provide outreach to the public on how the Title V program works or how the public can participate in the review and issuance of Title V permits. Nor does PSCAA implement any type of environmental justice program or provide notices in languages besides English. By providing basic training to the public on how the Title V program works and how the public can participate in the review and issuance of Title V permits, PSCAA could help ensure a more meaningful public participation process.

E. Permit Issuance / Revision / Renewal

Good Practices

1. PSCAA's permit engineers handle Title V permits as well as notice-of-construction (NOC) approvals. When reviewing NOC applications, the permit engineers determine what type of Title V modification may be needed. They then document their decision on the NOC worksheet and share it with the source. This is a good system for assuring that facility changes are appropriately addressed in the Title V program.
2. For minor permit modifications, PSCAA requires the source to include the specific permit language change; such that, the source and the permit engineer must reach agreement about the change before permit processing may begin. Given the fact that a source does not have to wait for their permit revision to implement a minor change, this assures the change requires only a minor permit modification.

Concerns

1. At the time of this review, PSCAA has four permit applications, received after 2000, for which the permit has not yet been issued; however, PSCAA has a plan to ensure these permits are issued soon. PSCAA has a backlog of permit renewals, with 13 renewal applications in house already. PSCAA also has been selective in processing permit reopenings, leaving some unprocessed. Title V permits are required to be reopened when the source becomes subject to newly promulgated applicable requirements if there are three or more years until the permit expires. PSCAA shared their concern that the requirement to reopen an operating permit to incorporate new MACT rules within 18 months of promulgation does not make sense when most of those rules have compliance dates 3 years after the promulgation date. The 18-month deadline often pre-dates the source's deadline to implement the selected compliance option in the MACT. EPA has stated that, consistent with Part 70, permitting authorities may initially describe MACT applicability at the subpart level as long as the detail requirements of the standard are added to the permit later, before the compliance date. PSCAA will need to manage their workload such that permit modifications and renewals meet regulatory deadlines. EPA's new focus on tracking permit issuance nationally will require PSCAA to track and report their progress.

Other Observations

None

F. Compliance

Good Practices

1. Each deviation report is logged, reviewed by the assigned permit engineer, reviewed by the assigned inspector, and then reviewed by both the inspection supervisor and the compliance systems planner. Each review (comments and recommendations) is documented in a database. This is a good approach for ensuring a thorough and consistent permit enforcement program.
2. PSCAA requires all deviations to be reported no later than 30 days after the end of the month in which they were discovered, with some reported sooner. This should allow PSCAA to ensure more timely mitigation and enforcement as needed.

Concerns

1. In their permits, PSCAA did not always clarify whether certain events were deviations or when a deviation occurs and, in some cases, appear to be inconsistent between their rules, permits and their questionnaire responses (see section F, item 2.b). For example, various rules and permits also excuse loss of monitoring data under certain circumstances, and some require recordkeeping and reporting which may not meet PSCAA's general deviation reporting deadlines. For these circumstances, it is not always clear when a deviation occurs. To assure proper implementation, PSCAA should review their rules and permits for these exceptions and then be clear in their rules or permits how each should be recorded and reported consistent with Title V deviation reporting requirements.
2. Like many permitting authorities, PSCAA requires corrective actions when certain monitored parameters are outside of the acceptable range. This is a practical approach for assuring potential operational problems are addressed promptly. When using this approach, PSCAA should clarify when a deviation occurs (when the unit is outside the range or if corrective action is not taken), such that the appropriate records are created and reported. Furthermore, PSCAA should add recordkeeping so each event of operation outside the acceptable range is documented, even if it is not a deviation.

Other Observations

1. The focus of this Title V program review was on PSCAA's implementation of its Title V program. Accordingly, in conducting this Title V program review, EPA reviewed PSCAA's compliance certification and semiannual monitoring report forms, but did not review completed forms submitted by Title V facilities to determine the extent of compliance with Title V requirements in PSCAA's jurisdiction and whether PSCAA is taking appropriate enforcement actions in response to noncompliance. EPA also conducts periodic reviews of state and local Clean Air Act enforcement programs which look at, among other things, source compliance and enforcement actions.
2. When asked what else EPA can do to assist PSCAA in the implementation of the Title V program, two suggestions were offered. PSCAA suggested that EPA commit resources to the compliance data reporting program run by EPA to improve the quality of data reported, to ease the submittal of necessary data, and to update the systems/programs to keep pace with current computing technology. It was also suggested that EPA continue to work on electronic reporting for compliance work to support wider implementation by all sources and agencies.

G. Resources and Internal Management Support

Good Practices

1. PSCAA appears to have a sound accounting system which effectively tracks Title V revenues and expenses separate from non-Title V revenues and expenses. Their use of cost centers for individual sources of revenues and expenses assists in the necessary segregation of funds.
2. When PSCAA had a backlog of initial Title V permits, they used a contract engineer to help write Title V permits.

Concerns

1. There does not appear to be a single tracking system for permit projects and actions that would allow management to know which projects are behind schedule and how large the backlog might be at any given time. After the interviews, the permit supervisor presented a new system that was being developed. The new system seemed to have some very impressive features. If successful, the new system will be very helpful in assuring permits are issued on time and the permitting backlog is managed appropriately.
2. While PSCAA seems to have been able to avoid and manage staff turnover, through a combination of competitive salaries and benefits and challenging work, 3 of the 6 permit engineers will be retiring in the near future. This will present a challenge to effectively replace the lost experience with an already mounting backlog in permit renewals and modifications.
3. Information provided by PSCAA indicates that PSCAA has a backlog of permit renewals, modifications and reopenings. Both renewals and modifications have regulatory deadlines for issuance. With the initial round of permit issuance completed, EPA is shifting our attention to tracking permit modifications and renewals to ensure that the permits are being issued on time. PSCAA will need to be sure they have adequate resources to meet the regulatory deadlines for these permit actions (see Good Practice #2 above).

Other Observations

1. PSCAA would like to see additional EPA support for training on new rules as well as technical courses (e.g. stack testing, permit writing) which enhance the existing skills of their engineers. Holding the training near PSCAA allows more staff to economically attend.

H. Title V Benefits

Benefits Identified by PSCAA

In response to the program review questionnaire and during the on-site interviews, PSCAA identified a number of benefits that have resulted from implementation of the Title V program.

1. PSCAA staff better understand NSPS, SIP and NSR/PSD requirements and how to design enforceable monitoring terms to assure compliance.
2. Since Title V began, PSCAA has more complete information and knowledge about facility operations and the applicability of requirements and is developing clearer and more enforceable permits. PSCAA identified inconsistencies in how sources had previously been regulated and is now taking steps to assure better regulatory consistency within source categories and between sources.
3. Occasionally, permit preparation uncovered compliance issues that were subsequently resolved. Permit development identified applicable rules that had not previously been identified. Gap-filling monitoring provisions have improved compliance.
4. Title V has resulted in pollution prevention efforts and emission reductions as sources become synthetic minor sources to avoid the program.
5. Title V has resulted in better documentation of the basis for applicable requirements (in the statement of basis) and improvements to PSCAA's records management and public involvement. PSCAA has an increased awareness of the necessity to review all required reports submitted and identify missing reports that had been overlooked.
6. Permittees are devoting more resources (staff, environmental management systems and controls) and attention (self audits and compliance monitoring) to assuring compliance with their permits and the applicable requirements. The facility owners and operators are more aware of the requirements that apply to their facilities, possibly in part due to PSCAA working more closely with sources to ensure a common understanding about permit requirements.
7. A variety of Title V permit writing skills and techniques (including monitoring, recordkeeping and reporting and the use of a statement of basis) are being used in non-Title V permits (e.g., PSD, NSR, NOC).
8. Title V fees have stabilized funding and improved support of the agency permitting/compliance staff such as training, resources and incentives for hiring and retaining quality staff. The financial rigor of the Title V program has also been applied to other fee programs (registration, asbestos, notices of construction) such that fees pay for the work in that program.

I. Document Review (Rules/Forms/Guidance)

Good Practices

1. PSCAA's web site contains all of their Title V permits and statements of basis, as well as many of the supporting documents such as construction approvals and consent decrees. This is a very effective way to make these permit-related documents available to industry and the general public.

Concerns

1. PSCAA updates their rules periodically to adjust their fee rates. EPA should be apprised of rule revisions. All rule revisions should be routinely submitted to EPA for review and approval, even the periodic fee adjustments.
2. PSCAA allows a "short form" for compliance certifications. Annual compliance certifications are required to include identification of each term or condition of the permit that is the basis of the certification, the compliance status of the source, and the method(s) used for determining the compliance status of the source. While PSCAA's compliance certification form is not required to be used, it likely serves as guidance for compliance certification reports. The form only requires deviations to be listed. Without listing each term or condition that the certification is based upon, the source is not obliged to list the method used to determine compliance. In fact, the compliance certification statement in the form implies that only the monitoring specified in the permit can form the basis for compliance, when, in reality, any credible evidence should be considered when documenting compliance. A more complete listing of the permit terms and conditions that the certification is based upon, along with any monitoring or other information used to make the determination, helps ensure accurate and complete certifications.
3. PSCAA's web site states that "Operating permits are required for major sources of air pollution." In some cases, minor sources are also required to obtain Title V operating permits. PSCAA should clarify this statement on their website.
4. PSCAA's deviation report form states that "A deviation is not necessarily a violation. Violations will be determined by Puget Sound Clean Air Agency." This is a misleading statement because EPA, courts and hearing boards are also authorized to determine whether a violation has occurred.

Other Observations

1. PSCAA noted that a regional Title V workshop would be very helpful if the right people and topics were included. Region 10 is considering the timing and format for such a workshop.